

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

**MARK COMBS,**

**Plaintiff,**

**v.**

**Case No. 3:11-cv-00385**

**MICHAEL J. ASTRUE,  
Commissioner of Social  
Security,**

**Defendant.**

**PROPOSED FINDINGS AND RECOMMENDATION**

On May 27, 2011, Plaintiff filed a complaint seeking review of the decision of the Commissioner of the Social Security Administration denying Plaintiff's claim for social security benefits. (ECF No. 1). The Commissioner filed an answer to the complaint and a transcript of the administrative proceedings on November 1, 2011. (ECF Nos. 6 and 7). Consequently, pursuant to L.R. Civ. P. 9.4, Plaintiff's brief in support of the complaint was due on or before December 5, 2011. Plaintiff did not timely file his brief. Accordingly, the Court entered an Order on February 14, 2012 instructing Plaintiff to file his brief within thirty (30) days. (ECF No. 8). After Plaintiff failed to comply with that order, the Court entered an Order to Show Cause on March 30, 2012. (ECF No. 9). The Order to Show Cause informed Plaintiff that, pursuant to L.R. Civ. P. 41.1, he had thirty (30) days in which to show good cause for the retention of this action. The Order to Show Cause further notified Plaintiff that if he failed to show good cause within the time frame specified, the undersigned would recommend dismissing this action for failure to

prosecute. To date, the plaintiff has not complied with the requirements of the Court's orders.

Based on the above, it is respectfully **RECOMMENDED** that the presiding District Judge dismiss this matter for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and L.R. Civ. P. 41.1. *See also Link v. Wabash Railroad Co.*, 370 U.S. 626, 630-33 (1962) (finding a court has the authority, pursuant to Rule 41(b), to dismiss a case *sua sponte* for lack of prosecution without notice of its intention to do so or providing an adversary hearing before acting). It is further respectfully **RECOMMENDED** that the presiding District Judge dismiss this matter without prejudice.

#### **NOTICE**

The parties are notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Robert C. Chambers. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the parties shall have fourteen days (filing of objections) and then three days (mailing/service) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of *de novo* review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989). Copies of such

objections shall be served on opposing parties and Judge Chambers.

The Clerk is directed to file this Proposed Findings and Recommendation and to transmit the same to counsel of record and to mail a copy to the plaintiff.

**ENTERED:** May 8, 2012.



Cheryl A. Eifert  
United States Magistrate Judge